



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

June 1, 1939

Hon. Leo Fresnell  
County Attorney  
Upshur County  
Gilmer, Texas

Dear Sir:

Opinion No. O-899  
Re: House Bill 866, 46th Legislature  
of Texas - Article 3, Section 56,  
Texas Constitution.

Your request for opinion upon the following  
question:

"Under H. B. 866, 46th Leg., would  
the commissioners' court be justified in  
requiring an itemized account of each com-  
missioner's expenses for the month, or  
merely approve and issue voucher for the  
full amount on a blanket requisition?"

has been received by this department.

House Bill No. 866 of the 46th Legislature  
of Texas, effective April 20, 1939, reads as follows:

"Sec. 1. County Commissioners - Tra-  
vel Expenses. In all counties in this  
state having a population of not less than  
twenty-two thousand, one hundred (22,100)  
nor more than twenty-two thousand, five hun-  
dred (22,500) according to the last preced-  
ing Federal Census, the commissioners' court  
of such county is hereby authorized to issue  
each commissioner the sum of fifty dollars  
(\$50.00) per month for traveling expenses  
while on official business. Said money to

Hon. Leo Presnell, June 1, 1939, Page 2

be paid out of the general fund of said county.

"Sec. 2. Emergency. The fact that county commissioners in certain counties must travel extensively on official business and the fact that there is no appropriation made by law to care for such expenses, create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this act shall take effect and be in force from and after its passage, and it is so enacted."

Upshur County, Texas, according to the last preceding Federal Census of 1930, has twenty-two thousand, two hundred and nine-seven (22,297) inhabitants. Upshur County, Texas, is the only county in Texas coming within the population brackets set out in House Bill 866 of the 46th Legislature, above quoted.

At the very outset of this opinion, we are confronted with the question of the constitutionality of House Bill 866 of the 46th Legislature of Texas, above quoted. The question arises as to whether or not this act is a local or special law regulating the affairs of counties in violation of Article 3, Section 56 of the Constitution of Texas.

The case of *Altgelt vs. Guzeit*, 201 SW 400, holds that Bexar County Road law, providing for an annual salary for commissioners of county for acting in all capacities, was unconstitutional, as an attempted regulation of county affairs by local and special law.

The case of *Smith vs. State*, 49 SW 2nd 739, holds that the constitutional prohibition against special laws cannot be evaded by making law applicable to a pretended class and that a statute classifying municipalities by population is "special" if population does not afford

Hon. Leo Presnell, June 1, 1939, Page 3

fair basis for classification but statute merely designates single municipality under guise of classifying by population. We quote from said case as follows:

"A consideration of the classification created by the act involved in the present case in the light of Article 3, Section 56 of the Constitution, primarily calls for the application of the rule that the Legislature cannot evade the prohibition of the Constitution by making a law applicable to a pretended class, which is as manifested by the act, in fact, no class. *Clark vs. Finley*, 54 SW 343, supra. Some of the tests for determining whether a pretended class is manifested by an act are laid down by McQuillan on Municipal Corporations, Volume 1, pages 498, 499. We quote: 'The classification adopted must rest in real or substantial distinction, which renders one class, in truth, distinct or different from another class... There must exist a reasonable justification for the classification; that is, the basis of the classification invoked must have a direct relation to the purpose of the law...'"

In the case of *Wood vs. Marfa Independent School District*, 123 SW 2nd 429, the court used the following language:

"We take judicial knowledge that no other county in Texas has the qualification of area and population demanded by the statutes.... It is sufficient to say here that when we look to the practical operation of the act, we are led to the conclusion that beyond doubt it was the purpose of the Legislature to single out Presidio County and make the act applicable to that county alone. *Bexar County vs. Tynan*, 97 SW 2nd 467. For that reason the act is a local act and one

Hon. Leo Fresnell, June 1, 1939, Page 4

which it was beyond the power of the Legislature to enact. Vernon's Annotated Civil Statutes, Texas Constitution, Article 3, Section 56; Brownfield vs. Tongate, 109 SW 2nd 382; City of Fort Worth vs. Bobbitt, 36 SW 2nd, 470; Fritter vs. West, 65 SW 2nd 414; Austin Bros. vs. Patton, 288 SW 182; Smith vs. State, 49 SW 2nd 739."

This department held in its opinion No. 0-18 on March 6, 1939, that Articles 2372e-1 and 5221b-23, Revised Civil Statutes of Texas, 1925, the former being applicable to counties having a population of not less than forty-eight thousand, nine hundred (48,900) and not more than forty-nine thousand (49,000) and the latter applying to counties with a population of not less than forty-eight thousand, nine hundred (48,900) and not more than forty-eight thousand, nine hundred and seventy-five (48,975) and counties with a population of not less than ten thousand, three hundred and seventy (10,370) and not more than ten thousand, three hundred and eighty (10,380), according to the last preceding Federal Census, were unconstitutional and void as special laws under Section 56, Article 3 of the state Constitution, citing the case of the City of Fort Worth vs. Bobbitt, 36 SW 2nd 470.

This department held in its opinion No. 0-364, on March 1, 1939, that Article 3902, Section 3a thereof, Revised Civil Statutes of Texas, 1925, providing for an office assistant, bookkeeper and stenographer in counties having a population of not less than forty-eight thousand nine hundred (48,900) and not more than forty-nine thousand (49,000) inhabitants, according to the last preceding Federal Census, was void under Article 3, Section 56, of the State Constitution.

This department held in its opinion No. 0-462, on March 21, 1939, that House Bill 632, 46th Legislature, which provides for the attachment of adjacent territory for zoning purposes by towns of not less than four thousand (4,000) inhabitants within counties of not less than

~~1000~~

Hon. Leo Presnell, June 1, 1939, Page 5

three hundred thousand (300,000) and not more than three hundred and fifty thousand (350,000) inhabitants according to the last preceding Federal census, was unconstitutional in that it attempted to enact a local law and fell within the prohibition of Article 3, Section 56 of the Constitution of Texas.

We are of the opinion that House Bill No. 866 of the 46th Legislature of Texas, quoted above, is clearly unconstitutional and violates Section 56 of Article 3 of the Constitution of Texas.

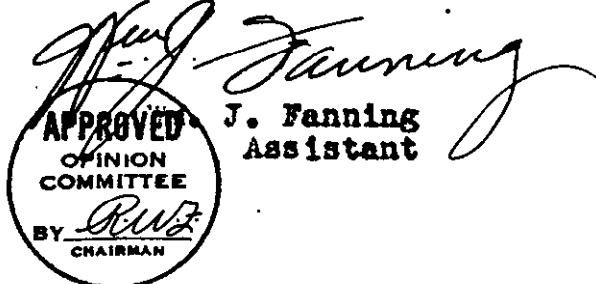
Therefore, you are respectfully advised that it is the opinion of this department that House Bill No. 866 of the 46th Legislature of Texas is unconstitutional. You are further respectfully advised that it is the opinion of this department that the commissioners' court would not be justified in paying the commissioners any sums of money as traveling expenses under this unconstitutional law.

Trusting that this answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By



J. Fanning  
Assistant

WFJ:AW

APPROVED:

*Gayle B. Mann*  
ATTORNEY GENERAL OF TEXAS